HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO. 15462 OF 1997

Between:

S. Jaganadha Rao

… Petitioner

and

The Vice Chairman and Managing Director,
A.P. Forest Development Corporation

… Respondent

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO. 15462 OF 1997

ORAL ORDER:

The proceedings dated 5.5.1997, whereby the petitioner's representation dated 21.2.1997 was examined in the light of the decision of the Internal Promotion Committee (for short 'the IPC') dated 22.4.1997 and the order of this court in W.P.No.27936 of 1996 dated 22.1.1997, and his request for promotion as a Divisional Manager as per his seniority on par with his juniors, who were promoted on 6.12.1994, was rejected, the present writ petition is filed.

The petitioner, a Plantation Manager, was proceeded against departmentally. A charge-sheet was issued against him and a departmental enquiry was held and, by proceedings dated 10.12.1994, the charges levelled against the petitioner were dropped. Few days prior thereto, the IPC met on 6.12.1994 to consider cases of eligible Plantation Managers for promotion as Divisional Managers. Since the case of the petitioner was not considered, and as his representation dated 21.2.1997 seeking promotion as Divisional Manager was rejected vide proceedings dated 5.5.1997, he filed the present writ

petition.

By way of an interlocutory order the petitioner sought that the earlier representation submitted by him on 19.11.1992, against the adverse remarks communicated to him on 16.8.1990, be considered and disposed of. It is the case of the petitioner that despite the fact that his representation dated 19.11.1992, wherein he had submitted his objections to the adverse remarks communicated to him on 16.8.1990, was pending the IPC had failed to consider his case for promotion and that these adverse remarks could not have been relied upon by the IPC, since his objections were pending on that date nor could it be used to deny him promotion as a Divisional Manager.

Sri P. Sree Ramulu Naidu, learned Standing Counsel for the respondent-Corporation, would point out that it was for the first time, after interim orders were passed by this court in WPMP No.18740 of 1997 dated 17.7.1997, directing the respondents herein to consider the petitioner's case for promotion by disposing of the representation dated 19.11.1992 made by him against the adverse remarks, did the respondents receive a copy of the said representation on 6.8.1997. Learned Standing Counsel would submit that, by proceedings dated 3.10.1997, while the adverse remarks communicated to the petitioner on 16.8.1990 were expunged, it was made clear that expunging these adverse remarks did not confer on the petitioner any right to claim promotion with retrospective effect. Learned Standing Counsel would submit that in the absence of a challenge to these proceedings dated 3.10.1997, the petitioner was not entitled to contend that he ought to

have been promoted as a Divisional Manager since his case for promotion was rejected by the IPC, on the basis of the adverse remarks, which were on record as on that date.

Sri C. Srinivasa Baba, learned counsel for the petitioner, would submit that the IPC, which met on 6.12.1994 had, in fact, not rejected the case of the petitioner on the basis of adverse remarks but had not promoted him on account of pendency of disciplinary proceedings and had kept his results in a sealed cover and since the charges levelled against the petitioner were subsequently dropped on 10.12.1994, it must be deemed that there were no disciplinary proceedings in existence and the petitioner ought to have been considered for promotion as a Divisional Manager w.e.f 6.12.1994. Learned counsel would submit that, even otherwise, since the objections to the adverse remarks were submitted vide letter dated 19.11.1992, which was not disposed prior to the IPC having met on 6.12.1994, the petitioner's case for promotion as a Divisional Manager could not have been rejected on the basis of adverse remarks against which objections were pending.

It is pertinent to note that, pursuant to the orders of this court dated 22.1.1997 and the representation submitted by the petitioner on 21.2.1997 seeking promotion, the IPC met on 22.4.1997 and the entire records including the decision kept in the sealed cover, confidential reports, service records etc; were placed before it. The IPC, after going through the records, observed that since there were sweeping

adverse remarks for the years 1988-89 and 1989-90 against the petitioner and, though the petitioner was subsequently cleared of the charges levelled against him, the adverse remarks had not been expunged against him, even on the date on which the IPC met on 22.4.1997. Therefore, his case could not be considered for inclusion in the promotion panel for the year 1994. It was on the basis of the recommendations of the IPC, which met on 22.4.1997, was the impugned order dated 5.5.1997 passed.

The question whether adverse remarks, against which objections are pending, can be taken into consideration by the IPC to deny promotion, in the light of the judgment of the Supreme Court in ***BAIKUNTHA NATH DAS V. CHIEF DISTRICT MEDICAL OFFICER (1.)***, which was referred to with approval in ***MADAN MOHAN CHOUDHARY V. STATE OF BIHAR (2.),*** need not be examined in the present case, for there is a serious dispute as to whether any objections were pending, against the adverse remarks communicated to the petitioner on 16.8.1990, when the IPC met on 6.12.1994.

It is specifically stated in the counter affidavit that, only after rejection of his case for promotion as a Divisional Manager, on the basis of the adverse remarks, did the petitioner file the present writ petition seeking that the adverse remarks be expunged and that the representation dated 19.11.1992, said to have been made by the petitioner to the Vice-Chairman and Managing Director, had not been received in the office of the respondent as verified from the records and

that it transpires to be a misrepresentation. Even in the proceedings dated 3.10.1997 (whereby the adverse remarks were expunged while making it clear that it did not confer any right on the petitioner for promotion as a Divisional Manager with retrospective effect), it is specifically noted that the representation dated 19.11.1992 was, in fact, received by the respondent only on 6.8.1997. No reply affidavit has been filed on behalf of the petitioner and as such the specific averment in the counter affidavit that the representation dated 19.11.1992 was received by them, for the first time, only on 6.8.1997, has not been controverted. As a necessary corollary it must be held that, on the date on which the IPC met on 6.12.1994, there were no objections pending against the adverse remarks on record and as such the IPC was justified in holding that the petitioner was not entitled to be promoted as a Divisional Manager in the light of the adverse remarks against him.

Sri C. Srinivasa Baba, learned counsel for the petitioner, would further contend that there is nothing on record to establish that the adverse remarks communicated to the petitioner on 16.8.1990 weighed with the IPC, which met on 6.12.1994 in rejecting his case for promotion to the post of Divisional Manager. According to the learned counsel it was only because of pendency of disciplinary proceedings, was the petitioner's case overlooked for promotion and, as subsequently on 10.12.1994 the charges were dropped, it must be held that there were no disciplinary proceedings pending against the petitioner, in which event he ought to have been considered by the IPC

on 6.12.1994, for promotion as a Divisional Manager on par with his juniors.

While the consequence of the charges levelled against the petitioner being dropped would necessitate the conclusion that no disciplinary proceedings were pending against the petitioner, that by itself would not entitle the petitioner to claim that he should be promoted as a Divisional Manager. The fact that there were adverse remarks against the petitioner, which were communicated to him on 16.8.1990, is not in dispute. In the light of the pendency of the adverse remarks, it cannot be said that the IPC was not justified in overlooking the petitioner's case for promotion as a Divisional Manager. There is no reason to presume that the IPC had not taken into consideration the adverse remarks levelled against the petitioner, which were communicated to him on 16.8.1990, in not recommending his case for promotion as a Divisional Manager.

Sri C. Srinivasa Baba, learned counsel for the petitioner, would rely on ***R.K. SINGH V. STATE OF U.P AND OTHERS (3.),*** in support of his contention that since the adverse remarks were subsequently expunged on 3.10.1997, it must be held that there were no adverse remarks in existence and as such the petitioner must be held to be entitled to be promoted as a Divisional Manager on 6.12.1994, since neither disciplinary proceedings were pending against him nor were there any adverse remarks against him. In ***R.K. Singh*** (supra 3), the Supreme Court held that once the adverse entries awarded to an

employee are expunged, the employee is entitled for promotion with effect from the date on which he was eligible for promotion.

If the adverse remarks had been expunged without any conditions, then the petitioner would have been entitled for being considered for promotion as a Divisional Manager on 6.12.1994, as it must be held that there were no adverse remarks against him. The fact, however, remains that in the proceedings dated 3.10.1997, while expunging the adverse remarks on sympathetic considerations, the competent authority had specifically observed that the said order dated 3.10.1997 did not confer any right on the petitioner to claim promotion with retrospective effect.

Sri C. Srinivasa Baba, learned counsel for the petitioner, would contend that it was not open to the competent authority to give prospective effect to an order expunging adverse remarks and that the said order is a nullity and must be ignored.

While the submission of the learned counsel for the petitioner, that expunging of the adverse remarks with prospective effect is impermissible in law, cannot be said to be without merit, it cannot also be lost sight of that there is no specific challenge, in this writ petition, to the validity of the proceedings dated 3.10.1997. Even a void order is required to be declared as such, and it is only on a challenge thereto, can such a declaration be made. In the absence of any challenge to the proceedings dated 3.10.1997, it is not for this court to examine its validity or to hold that the portion of the order which, in effect, expunges the adverse remarks with prospective effect, is a nullity and

must be ignored.

Only on the short ground that the impugned order dated 3.10.1997 has not been challenged and has been permitted to attain finality, the writ petition must fail. The writ petition is accordingly dismissed. However in the circumstances, without costs.

RAMESH RANGANATHAN, J

DATE: 5.3.2007

CVM

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1. AIR 1992 SC 1020
2. (1999) 3 SCC 396
3. 1991 SUPP (2) SCC 126